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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 ARIF DURRANI,
12 Petitioner,
13 v.
14 S. A. HOLENCIK,
15 Respondent.

No. CV 06-6281 PA

ORDER DIRECTING CLERK TO
TRANSFER PETITION TO THE
UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF
CALIFORNIA

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18 SUMMARY

19 Petitioner is presently serving a 150 month sentence imposed by the United States District
20 Court in the Southern District of California following his conviction in United States v. Arif
21 Durrani, CR 05-1746 LAB (S.D. Cal. 2006). The defendant contends that he is entitled to an
22 immediate order of release because this court granted the government's motion to dismiss the
23 charges pending against him in this district. See United States v. Arif Durrani, CR 99-470 PA.
24 After reviewing the record, this Court concludes that it lacks jurisdiction to consider the defendant's
25 petition under 28 U.S.C. § 2241. The Court construes the petition as brought under 28 U.S.C.
26 § 2255 and transfers the matter to the United States District Court for the Southern District of
27 California where the defendant was convicted and sentenced.
28

1 PROCEDURAL HISTORY

2 On May 7, 1999, a grand jury in the Central District of California indicted the defendant for
3 exporting defense articles without a license in violation of 22 U.S.C. § 2778(b)(2) and (c), and 22
4 C.F.R. § 127.1(d) and 127.3. Based on the 1999 indictment, a warrant for the defendant's arrest
5 was issued in the Central District of California. On June 15, 2005, defendant, who had been living
6 in Mexico, was arrested in Los Angeles. On September 23, the government filed a motion to
7 dismiss the 1999 indictment. This Court granted the motion, dismissed the 1999 indictment, and
8 issued an order releasing the defendant.

9 On September 23, the government filed a complaint against the defendant in the Southern
10 District of California charging him with conspiring to export defense articles without a license.
11 That complaint charged the defendant with the illegal exportation of military aircraft components in
12 2004 and 2005. On September 23, 2005, a magistrate judge in the Southern District issued an arrest
13 warrant for the defendant. The defendant was arrested on that warrant on September 26 in the
14 Central District of California. On September 29, a grand jury in the Southern District of California
15 returned a five count indictment charging defendant with one count of conspiracy and four counts
16 of exporting defense articles without a license. On March 17, 2006, a jury found the defendant
17 guilty on all five counts. The defendant appealed that conviction. The conviction was subsequently
18 affirmed by the Ninth Circuit.

19 On October 2, 2006, defendant filed the instant petition. In an order filed on July 17, 2007,
20 this Court construed the defendant's habeas corpus petition as a motion under 28 U.S.C. § 2255,
21 denied the motion, dismissed the action for lack of jurisdiction, determined the petition successive,
22 and referred the matter to the Ninth Circuit. On November 17, 2007, the Ninth Circuit issued an
23 order in which it found that, because the Southern District had vacated an earlier order and allowed
24 defendant to withdraw his § 2255 motion, the filing in this case was not successive. In addition, the
25 Court noted that the defendant "filed a document stating that [his petition] challenges, not a
26 Southern District decision, but a rather a release order issued by [this Court] in Case No. CR 99-470
27 PA." The Court ordered defendant's motion transferred back to this Court. On December 27, 2007,
28 this Court issued a briefing schedule. The matter having been fully briefed, the Court construes the

1 petition as a motion brought under 28 U.S.C. § 2255 and transfers the matter to the Southern
 2 District of California where the defendant was convicted and sentenced.

3 DISCUSSION

4 A federal inmate's petition to challenge the legality of his conviction and sentence must
 5 generally be filed under 28 U.S.C. § 2255 in the district in which he was convicted and sentenced,
 6 whereas a petition to challenge the manner, location, or conditions of the execution of the sentence
 7 must be brought under 28 U.S.C. § 2241 in the custodial district. See Hernandez v. Campbell, 204
 8 F.3d 861, 864-65 (9th Cir. 2000). A federal prisoner may file a habeas corpus petition pursuant to
 9 Section 2241 to contest the legality of his conviction or sentence only where his remedy under
 10 Section 2255 is "inadequate or ineffective to test the legality of his detention." Stephens v. Herrera,
 11 464 F.3d 895, 897 (9th Cir. 2006), cert. denied, denied, 75 U.S.L.W. 3512 (U.S. March 26, 2007)
 12 (No. 06-9645) (citations omitted). The "inadequate or ineffective" exception is narrow. Ivy v.
 13 Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003). .

14 Petitioner contends that the district court was without jurisdiction to render a judgment in
 15 the Southern District case. Petitioner thus challenges the legality of the judgment and sentence
 16 rather than the manner, location, or conditions of his sentence. See Morrison v. Lappin, No.
 17 4:06CV2087, 2006 WL 3545138, at *4 (N.D. Ohio Dec. 9, 2006) (characterizing petitioner's
 18 argument that the district court lacked jurisdiction to bring him to trial because he was extradited in
 19 violation of the doctrine of specialty as "directly attacking his conviction . . . squarely within the
 20 confines of § 2255. . ."). Since Petitioner challenges only the legality of his federal sentence, this
 21 Court has jurisdiction over the Petition only if the remedy under Section 2255 is "inadequate or
 22 ineffective to test the legality of his detention." See Hernandez, 204 F.3d at 865-66. Petitioner
 23 neither alleges nor demonstrates that such is the case.^{1/} See Jeffers v. Chandler, 253 F.3d 827, 830

24
 25 ^{1/} Petitioner seeks an order of immediate release pursuant to 28 U.S.C. § 2241 to which he
 26 believes he became entitled in 2005 when the charges in CR 99-470 PA were dismissed. He claims
 27 that he is being held based on a release order issued by this Court. The defendant is not being held
 28 because of the release order issued by this Court, but rather because of the judgment and sentence
 entered in the Southern District of California. The defendant apparently believes that this Court
 should have prevented him from being arrested. Defendant's argument is based on the contention
 that he was extradited to the United States from Mexico to face the charges pending in this district

1 (5th Cir. 2001) (burden of coming forward with evidence to show inadequacy or ineffectiveness of
2 section 2255 remedy rests squarely on petitioner).

3 Because Petitioner challenges a federal sentence and there has been no showing that the
4 remedy under Section 2255 is inadequate or ineffective, the Court construes the Petition as a motion
5 to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This Court, however, does
6 not have jurisdiction to consider Petitioner's motion because it must be brought in the district in
7 which he was convicted or sentenced. Hernandez, 204 F.3d at 865. Accordingly, this action either
8 must be dismissed or transferred to the Southern District of California where petitioner was
9 convicted and sentenced.

10 Defendant is imprisoned based on his conviction and sentence in United States v. Arif
11 Durrani, CR 05-1746 LAB (S.D. Cal. 2006). The indictment in this district, in United States v. Arif
12 Durrani, CR 99-470 PA was dismissed with prejudice on September 23, 2005 and this Court
13 ordered the defendant released. His subsequent arrest, detention and transportation to the Southern
14 District of California was based on the arrest warrant issued in that district, not the release order
15 issued in this district. The defendant has challenged the legality of his arrest, detention, indictment,
16 trial, conviction and sentence in the trial court in the Southern District and on appeal. He is in
17 custody based on the conviction in the Southern District and not as a result of a decision by this
18 Court. The defendant is not challenging the conditions of his custody, and he is not in custody as a
19 result of the release order issued by this Court.

20 and that he should have been returned to his country of origin based on the doctrine of specialty.
21 There is no basis for the defendant's contention that he was extradited and/or kidnaped from
22 Mexico by the government. The defendant was notified by the Mexican government on June 14,
23 2005 that he was expelled from that country for failing to maintain his immigration status. Thus,
24 since he was never extradited, the doctrine of specialty cannot be used to challenge his conviction.
See United States v. Sensi, 879 F.2d 888, 896 (D.C. Cir. 1989); (citing United States v. Rauscher,
25 119 U.S. 407, 7 S. Ct. 234, 30 L. Ed. 425 (1886); United States v. Valot, 625 F.2d 308, 310 (9th
Cir. 1980) (limiting Rauscher to cases involving formal extradition pursuant to an extradition
treaty). Moreover, even if this allegation was true, it is of no moment. See United States v.
26 Alvarez-Machain, 504 U.S. 655, 670 (1992) (defendant's forcible abduction from Mexico did not
violate the extradition treaty and therefore did not prohibit his trial in the United States); see also
27 United States v. Matta-Ballesteros, 71 F.3d 754, 761-62 (9th Cir. 1996). This Court was not
28 required to issue a release order that shielded the defendant from a subsequent arrest pursuant to a
valid arrest warrant.

This Court lacks jurisdiction to entertain the defendant's continuing challenge to his conviction in the Southern District. Accordingly, the defendant's petition must be dismissed without prejudice or transferred to the Southern District of California of California.

IT IS THEREFORE ORDERED:

1. The Petition is construed as a motion under 28 U.S.C. § 2255.
 2. The Clerk is directed to transfer the Petition to the United States District Court for the Southern District of California.^{2/}

DATED: August 12, 2008


Percy Anderson

Percy Anderson
UNITED STATES DISTRICT JUDGE

^{2/} The defendant's ex parte application for judicial notice and motion for reconsideration of the denial of his motion for default judgment are denied as moot.



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

SHERRI R. CARTER
District Court Executive and
Clerk of Court

To: Clerk, United States District Court

District of _____

Re: Transfer of our Civil Case No. _____

Case Title: _____

Dear Sir/Madam:

An order having been made transferring the above-numbered case to your district, we are transmitting herewith our file:

- Original case file documents are enclosed in paper format.
- Electronic Documents are accessible through Pacer.
- Other: _____

Very truly yours,

Clerk, U.S. District Court

Date: _____

By _____
Deputy Clerk

cc: All counsel of record

TO BE COMPLETED BY RECEIVING DISTRICT

Please acknowledge receipt via e-mail to appropriate address listed below and provide the case number assigned in your district:

- CivilIntakecourtdocs-LA@cacd.uscourts.gov (Los Angeles Office)
- CivilIntakecourtdocs-RS@cacd.uscourts.gov (Riverside Office)
- CivilIntakecourtdocs-SA@cacd.uscourts.gov (Santa Ana Office)

Case Number: _____

Clerk, U.S. District Court

Date: _____

By _____
Deputy Clerk